

JUL 13 1978

KIRSCH ARAK AND BULMASH
280 So. Beverly Drive
Suite 300
Beverly Hills, CA 90212
(213) 278-9250

F I L E
Robert M. Zumwalt, Clerk
JUL 12 1978
A. S. M., Deputy.

Attorneys for Defendant
CIRCLE INTERNATIONAL CO.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

GREMLIN INDUSTRIES,
a Delaware corporation,

Plaintiff,

vs.

CIRCLE INTERNATIONAL CO.,
INC., etc. et al.,

Defendants.

CASE NO. 416704

NOTICE OF MOTION AND MOTION
FOR CHANGE OF VENUE; FOR COSTS
AND ATTORNEYS' FEES; POINTS
AND AUTHORITIES IN SUPPORT
THEREOF; AFFIDAVIT OF MERITS
IN SUPPORT THEREOF; DECLARATIONS
OF RICHARD J. GREENE AND DEAN
McMURDIE IN SUPPORT THEREOF

Date: August 24, 1978
Time: 1:30 P.M.
Place: Department 4

TO: Plaintiff, GREMLIN INDUSTRIES, INC., and to its
attorney of record, Ernest Borunda, Esq.:

PLEASE TAKE NOTICE that on August 24, 1978, at 1:30 P.M.
or as soon thereafter as the matter may be heard in Dept. 4
of the above-entitled Court, located at 220 W. Broadway, San
Diego, California, Defendant CIRCLE INTERNATIONAL CO., will
move the Court for an Order Changing Venue for the trial of
this action to the Los Angeles Superior Court, Central District,
located at 111 North Hill Street, Los Angeles, California.

This Motion will be made on the grounds that the Court

CHANCE OF VENUE

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1 designated on the Complaint on file herein is not the proper
2 Court for the trial of this action, thus requiring that the
3 matter be transferred to the Los Angeles County Superior Court,
4 Central District.

5 This Motion will be based on this Notice of Motion,
6 the Memorandum of Points and Authorities filed herewith, the
7 Affidavit of Merits filed in support hereof, the Declarations
8 filed in support thereof, and such further documentary and/or
9 oral evidence as the Court may receive at the time of hearing
10 on this Motion.

11 Defendant CIRCLE INTERNATIONAL CO. will also move
12 the Court for an Order for costs and attorneys' fees incurred in
13 making this Motion, pursuant to the provisions of California Code
14 of Civil Procedure Section 396(b).

15 Dated: June 28, 1978

KIRSCH ARAK AND BULMASH

16
17 By: Richard J. Greene
18 RICHARD J. GREENE, Attorneys
19 for Defendant CIRCLE INTERNATIONAL
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AFFIDAVIT OF MERITS

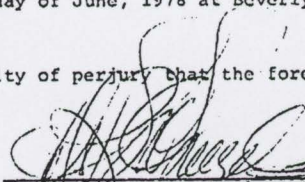
I, DEAN McMURDIE, declare and state:

1. That I am the President of Circle International Co., the Defendant in the above-entitled and numbered action. That as to the following facts I know them to be true of my own personal knowledge and if called and sworn as a witness in this matter, I could and would competently testify thereto.

2. That I have fully and thoroughly stated the case regarding this action and all facts and circumstances connected to it to my counsel, Kirsch Arak and Bulmash who are licensed and practicing attorneys, admitted to practice before all of the Courts of the State of California; and after such statement I am advised by such counsel, and truly believe, that I have a good and valid defense on the merits to the allegations set forth in the Complaint on file herein.

Executed this 29th day of June, 1978 at Beverly Hills, California.

I declare under penalty of perjury that the foregoing is true and correct.


DEAN McMURDIE, Declarant

LAW OFFICES
KIRSCH, ARAK AND BULMASH
280 SOUTH BRIDLE DRIVE, SUITE 200
BEVERLY HILLS, CALIFORNIA 90212
TELEPHONE (310) 278-9280

POINTS AND AUTHORITIES

Defendant, CIRCLE INTERNATIONAL COMPANY, submits the following Points and Authorities in Support of its Motion:

1. THE CONTROVERSY HEREIN CENTERS AROUND AN ORAL CONTRACT FOR THE PURCHASE AND SALE OF GOODS AND AS SUCH, THE PROPER VENUE IS IN THE COUNTY WHERE THE LAST ACT NECESSARY TO EFFECTUATE THE CONTRACT TOOK PLACE.
Bank of Yolo vs. Sperry Flower Co. 141 Cal. 314 (1903);
Pacific Airlines vs. Superior Court, 231 Cal. App. 2d 587, (1965);
Witkin, California Procedure, Section Edition, Actions Section 478.

Although Plaintiff has employed the tactic of pleading its Complaint in common counts, which provides the Court with the least possible information regarding the circumstances surrounding the controversy between the parties, it becomes apparent that one party cannot become obligated to another upon an open book account, account stated, or any other theory, unless some type of agreement is the underlying transaction. The agreement in the case at bar is an oral contract for the purchase and sale of goods.

The Complaint, at Paragraph 3 thereof, alleges only that the obligation was payable in San Diego. However, not only

1 is this less than dispositive as to where payment is made, it
2 fails to take into account that the underlying transaction being
3 an oral contract for the purchase of goods, venue would be proper
4 at the place where the last act necessary for the effectiveness
5 of the contract took place. As appears with more particularity
6 in the Declaration of Dean McMurdie filed in support of this
7 Motion, the vast majority of goods shipped by GREMLIN to CIRCLE
8 were shipped freight collect, to be accepted and with freight
9 charges paid in Los Angeles County, California.

10 In discussing and deciding that the Court must inquire
11 into the nature of the action, the Pacific Airlines Court, at
12 page 590 of its opinion held:

13 "The true rule is that in venue
14 matters, we look to the Complaint
15 to determine the nature of the
16 action..."

17 Here, however, Plaintiff has employed the method of
18 pleading which gives the Court the lease information. However,
19 as Plaintiff well knows, the vast majority of the goods shipped
20 to CIRCLE required acceptance by CIRCLE paying the freight
21 charges in Los Angeles County, California, thus finalizing the
22 acceptance of delivery of the goods and thus being the last act
23 necessary to effectuate the oral agreement to purchase.

24 While Plaintiff may argue that California Civil Code
25 Section 1489 takes cognizance that an offer of performance may be
26 made to the creditor where he resides, said Section provides
27 that this is done at the option of the debtor. There is no
28 allegation in the Complaint supportive of such theory.

1 Professor Witkin, supra, at page 1302 of this Procedure
2 Treatise, further verifies that the Court must seek the intention
3 of the parties in the circumstances.

4 As the Declaration of Dean McMurdie filed in support
5 of this Motion will show, the intentions of the parties was that
6 the goods be accepted and freight charges paid in Los Angeles
7 County, thus finalizing and effectuating the contract at that
8 location. In fact, Plaintiff's own invoices are illustrative
9 of the fact that the vast majority of shipments were freight
10 collect.

- 11
12 2. ON A MOTION FOR CHANGE OF VENUE BY
13 A CORPORATE DEFENDANT SUED IN A
14 COUNTY OTHER THAN WHERE ITS PRINCIPAL
15 PLACE OF BUSINESS IS LOCATED, THE
16 BURDEN IS ON PLAINTIFF TO ESTABLISH
17 THE PROPRIETY OF VENUE IN THE COURT
18 WHERE THE SUIT WAS FILED.
19 Meyer vs. Burdett Oxygen Co., 170 Cal. App. 2d
20 519 (1959).

21
22 While Plaintiff may argue that the rules for venue as
23 concerns corporate defendants are more broad than those pertaining
24 to an individual defendant, the law specifically provides that
25 such theory is tempered by a shifting of the burden to Plaintiff
26 to establish the propriety of venue. Or, to put it as the Meyer
27 Court did, at page 523 of its opinion:

28 //

"The general rule is that where an action is brought against a corporation in a county other than where its principal place of business is located, the burden is on the plaintiff, on an application for change of venue, to show that the contract was made, or was to be performed, or that the obligation arose, or that the breach occurred in the County where the suit was brought. (Hammond vs. Ocean Shore Development Co. 22, Cal. App. 167...)"

[Emphasis added]

Here, Plaintiff has used the barest venue allegation possible and provided the Court with the least amount of information concerning the facts of the underlying transaction between the parties. It is therefore submitted that Plaintiff has totally failed to establish venue in San Diego County.

3. COSTS OF MAKING A MOTION FOR CHANGE OF VENUE AND ATTORNEYS FEES' INCURRED ARE RECOVERABLE AND SHOULD BE AWARDED TO DEFENDANT.
- California Code of Civil Procedure, Section 396(b)

The above-cited statute provides in pertinent part:

"...the court may order the payment to the prevailing party of reasonable

1 expenses and attorneys' fees incurred
2 in making or resisting such motion
3 whether or not such party is otherwise
4 entitled to recover its costs of
5 action. In determining whether such
6 order for expenses or fees shall be
7 made, the court shall take into consid-
8 eration (1) whether an offer to stipulate
9 to change of venue was reasonably made
10 and rejected, and (2) whether such motion
11 or selection of venue was made in good
12 faith given the facts and law the
13 party making the Motion or selecting
14 the venue knew, or should have known."

15 As will appear with more particularity in the Declaration
16 of Richard J. Greene filed in support hereof, an offer for
17 stipulated change of venue was made, but rejected by Plaintiff's
18 counsel. It is therefore submitted that the costs and attorneys'
19 fees incurred by Defendant in making this Motion should be
20 awarded by the Court.

21
22 CONCLUSION

23
24 Pursuant to the foregoing, it is submitted that
25 Plaintiff, in framing its Complaint, has omitted to inform the
26 Court of the facts of the underlying transaction, and specifically
27 facts indicative that the last act necessary to effectuate an
28 finalize its contract for sale and purchase of goods with

1 CIRCLE INTERNATIONAL COMPANY took place in Los Angeles County,
2 California. Specifically, Plaintiff has failed to set forth
3 the freight collect shipping terms and/or the fact that numerous
4 invoices for goods were sent, along with the goods, cash on
5 delivery. Thus, it is submitted that Defendant's Motion to Change
6 Venue should be granted.

7 Dated: June 28, 1978

Respectfully submitted,

KIRSCH ARAK AND BULMASH

By: Richard J. Greene
RICHARD J. GREENE, Attorney
for Defendant CIRCLE
INTERNATIONAL COMPANY

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DECLARATION OF DEAN McMURDIE

I, DEAN McMURDIE, declare:

1. That I am the President of CIRCLE INTERNATIONAL COMPANY, INC., a California corporation, and Defendant herein. That as to the following facts, I know them to be true of my own personal knowledge and if called and sworn as a witness in this matter, I could and would competently testify thereto.

2. That as President of CIRCLE INTERNATIONAL COMPANY, I am the person primarily in charge of all transactions with GREMLIN INDUSTRIES and have had dealings with GREMLIN INDUSTRIES, for in excess of five years. In fact, I was instrumental in the creation of GREMLIN INDUSTRIES from its inception and provided said entity with the funds with which to build their first line of products.

3. That at no time whatsoever, has CIRCLE INTERNATIONAL COMPANY ever agreed to an account stated with GREMLIN INDUSTRIES in the amount of \$89,640.70, or in any other amount whatsoever.

4. In fact, there has been a continuing dispute between CIRCLE INTERNATIONAL and GREMLIN INDUSTRIES regarding what amount, if any at all, is payable from CIRCLE INTERNATIONAL to GREMLIN INDUSTRIES. The reason for this is simply that a large majority of the goods shipped to CIRCLE INTERNATIONAL by GREMLIN INDUSTRIES were, and are, totally defective and unsuitable for resale or any use whatsoever. In fact, GREMLIN INDUSTRIES agreed to take back \$29,000.00 of goods which I personally arranged to have shipped back to them. However, despite promising to accept the returns, GREMLIN refused to accept delivery, thus

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1 causing substantial expense to be incurred by CIRCLE INTERNATIONAL.
2 The minimum amount of defective merchandise is \$29,000.00 and
3 GREMLIN INDUSTRIES was notified in each instance as defective
4 merchandise was discovered and promptly on discovery of same.

5 5. In addition, numerous orders from GREMLIN INDUSTRIES
6 were late, were invoiced as back orders without any prior notice
7 that the order couldn't be filled, and/or were defective as
8 described above. The result of all of this has been tremendous
9 damage to CIRCLE INTERNATIONAL COMPANY in the form of cancellation
10 of orders resulting in lost sales, loss of business due to
11 customers going elsewhere for the reason that their orders
12 were not filled on time, tremendous amounts of damages incurred
13 by having to have CIRCLE INTERNATIONAL service department
14 personnel work on the machines from GREMLIN in order to try and
15 make the machines suitable for resale, and a loss of reputation
16 and goodwill in the business community as a result of CIRCLE
17 INTERNATIONAL not being able to live up to its obligations for
18 delivery of merchandise all due to the failures of GREMLIN to
19 properly perform its obligations to CIRCLE INTERNATIONAL.

20 6. The result of the foregoing is that CIRCLE has
21 been damaged in an amount far in excess of the amount claimed
22 due from CIRCLE by GREMLIN. While the exact amount of CIRCLE
23 INTERNATIONAL's damages have not yet been ascertained, my years
24 of experience as the President and Chief Administrative Officer
25 of CIRCLE INTERNATIONAL COMPANY indicate to me that the loss of
26 business by virtue of lost customers and lost sales for order
27 cancellations, as well as the defective merchandise, which
28 GREMLIN has refused to make good on, will total far in excess of

1 the amount sued for in the Complaint in this action.

2 7. Additionally, with regard to merchandise shipped
3 to CIRCLE INTERNATIONAL by GREMLIN INDUSTRIES, the vast majority
4 of said shipments were freight collect with the last act
5 necessary for acceptance of the goods to take place in Los
6 Angeles County, California, by CIRCLE INTERNATIONAL COMPANY
7 paying the freight collect charges, thus finalizing each
8 purchase transaction. Attached hereto collectively marked
9 Exhibit "1" and incorporated herein by this reference as
10 though set forth in full are true and correct copies of GREMLIN
11 invoices to CIRCLE INTERNATIONAL in excess of \$50,000.00, all
12 of which show on their face that the shipments were freight
13 collect. These invoices are furnished for illustration only
14 and do not reflect each and every transaction where GREMLIN
15 sent freight collect shipments to CIRCLE INTERNATIONAL to be
16 accepted as set forth hereinabove.

17 8. In addition, attached hereto marked collectively
18 as Exhibit "2", and incorporated herein by this reference as
19 though set forth in full are true and correct copies of numerous
20 invoices from GREMLIN to CIRCLE INTERNATIONAL which were C.O.D
21 (cash on delivery) with delivery and cash on delivery to take
22 place in Los Angeles County, California. These items are included
23 in the statement of account which Plaintiff has attached to its
24 Complaint. However, these transactions are a further illustration
25 of the fact that delivery and acceptance in Los Angeles County,
26 California was the circumstance contemplated to finalize and
27 effectuate each purchase transaction.

28 9. Furthermore, with regard to shipments received

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1 CIRCLE INTERNATIONAL COMPANY's receiving form specifically
2 provides:

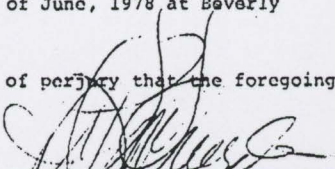
3 "All merchandise received subject to
4 deduction for broken or missing parts."

5 What this simply means is that no transaction was
6 to be finalized, nor the goods accepted until it was verified
7 that said items were in proper order. Attached hereto marked
8 Exhibit "3" is a true and correct copy of an exemplar of a
9 CIRCLE INTERNATIONAL COMPANY receiving document.

10 10. Additionally, at no time whatsoever did CIRCLE
11 INTERNATIONAL COMPANY, nor did I as President of CIRCLE INTERNATIONAL,
12 instruct GREMLIN INDUSTRIES as to the method by which goods were
13 to be shipped to CIRCLE and/or the name of, or type of, carrier
14 to be used.

15 Executed this 29th day of June, 1978, at Beverly
16 Hills, California.

17 I declare under penalty of perjury that the foregoing
18 is true and correct.

19 
20 DEAN MCMURDIE, Declarant
21
22
23
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25
26
27
28

ORIGINAL INVOICE

Gremlin**Gremlin Industries, Inc.**

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

SHIP TO

TO

A0508
CIRCLE, INTERNATIONAL
2225 W. PICO BLVD

LOS ANGELES,

CA 90006

SEASON'S GREETINGS!

ATTENTION

01

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
27 JAN 78	27 JAN 78	TRUCK	VERBAL/D.M.	FACT	NET 30	1999981-1
PART NUMBER	QUANTITY		SHIP.	DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.				
712-0001	10	0	10	THIS IS A BACKORDER INVOICE		
				GAME TENPIN	1095.00	10950.00
				SHIP COLLECT		
				TOTAL		10950.00
<div data-bbox="129 901 352 1059" data-label="Text"> <p>RECEIVED 6/2/78 DELIVERED</p> </div> <div data-bbox="186 1065 528 1125" data-label="Text"> <p>(N) RD 17132-1/31/78</p> </div> <div data-bbox="378 958 580 1155" data-label="Text"> <p>Serial Numbers: 6022 6023 6024 6025 6026 6027 6028 6029 6030 6031</p> </div> <div data-bbox="600 960 777 1092" data-label="Text"> <p>104-A ✓</p> </div>						

EXHIBIT "1" PAGE 1 OF 1

PLEASE PAY THE LAST
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

Gremlin

Gremlin Industries, Inc.

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

ORIGINAL INVOICE

SOLD TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

SHIP TO

LOS ANGELES,

CA 90006

ATTENTION:

03

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
02 FEB 78	01 FEB 78	TRUCK	SAMPLES	FACT	NET 30	20494
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	B.O.	SHIP.			
715-0001	2	0	2	SAFARI	1395.000	2790.00
				SHIP COLLECT		
				TOTAL		2790.00
SN : 7020 7021						

104-11746-2/3/78

104-A

(N) RD17146-2/3/78

104-11746-2/3/78

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ORIGINAL INVOICE

EXHIBIT

PAGE 2 OF 7

Gremlin

Gremlin Industries, Inc.

2401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

ORIGINAL INVOICE

SOLO TO

SHIP TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

LOS ANGELES,

CA 90006

ATTENTION:

01

SEASON'S GREETINGS!

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	P.O.B.	TERMS	INVOICE NO.
09 JAN 78	06 JAN 78	TRUCK	VERBAL/D.M.	FACT	NET 30	19999
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
712-0001	25	15	10	GAME TENPIN	1095.000	10950.00
				SHIP COLLECT		
				TOTAL		10950.00
SN 5848 THRU 5856 5858						

104-A

(N) RD 17010 - 1/9/78

104-137-A

HERE

PLEASE PAY THE LAST
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

ORIGINAL INVOICE

Gremlin**Gremlin Industries, Inc.**

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

SOLO TO

SHIP TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

LOS ANGELES,

CA 90006

ATTENTION:

01

SEASON'S GREETINGS I

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
13 JAN 78	12 JAN 78	TRUCK	VERBAL/D.M.	FACT	NET 30	1999981-1
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
712-0001	15	10	5	THIS IS A BACKORDER INVOICE GAME TENPIN	1095.000	5475.00
				SHIP COLLECT		
				TOTAL		5475.00

O/N
 5912
 thru
 5916

104-A
 (N) R 170-36 - 1/1-176
 1/10/78
 1/10/78

PLEASE PAY THE LAST AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT

PAGE 1 OF 1

ORIGINAL INVOICE

Gremlin**Gremlin Industries, Inc.****8401 Aero Drive, San Diego, California 92123****Telephone: (714) 277-8700**

SOLD TO

SHIP TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

LOS ANGELES,

CA 90006

ATTENTION:

03

SEASON'S GREETINGS!

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
23 DEC 77	23 DEC 77	TRUCK	VERBAL/D.M.	FACT	NET 30	19998
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
714-0001	10	0	10	GAME DYC	1195.000	11950.00
				SHIP COLLECT.		
				TOTAL		11950.00

Serial Numbers: 6650 through 6659

104-A

(N) RD 16975-12/27/77

ORIGINAL INVOICE

PLEASE PAY THE LAST
AMOUNT IN THIS COLUMN

Gremlin

Gremlin Industries, Inc.

2401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

ORIGINAL INVOICE

SOLD TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

SHIP TO

C.O.D. @ 150% OF PURCHASE

LOS ANGELES,

CA 90006

ATTENTION:

03

SEASON'S GREETINGS!

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	P.O.B.	TERMS	INVOICE NO.
14 DEC 77	13 DEC 77	TRUCK	VERBAL/D.E.	FACT	NET 30	19792
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
714-0001	6	0	6	GAME D/C	1195.000	7170.00
				SHIP COLLECT		
				TOTAL		7170.00
<div>REC-60 12/24/77 DOCHERE</div> <div>S/N 6578 through 6583</div> <div>(N) RD76953-12/22/77</div>				104-A		

PLEASE PAY THE LAST
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

ORIGINAL INVOICE

Gremlin**Gremlin Industries, Inc.**

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

SOLD TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

SHIP TO

CUSTOMER PICK UP
ROWE AUTOMATIC
11/15/77-RECEIVED BY
KEVIN DAVIS

LOS ANGELES,

CA 90006

ATTENTION:

01

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
16 NOV 77	15 NOV 77	OTHER	VERBAL	FACT	NET 30	19335
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
712-0001	1	0	1	GAME TENPIN.	1095.00	1095.00
				S/N: 5502; RECEIVED PER RECEIPT # 133112		
				TOTAL		1095.00

106

(N) RD 16803 - 11/2/77

REC'D
NOV 11/1977
COURTESY

PLEASE PAY THE LAST
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT "1"

PAGE 2 OF 2

Gremlin

ORIGINAL INVOICE

Gremlin Industries, Inc.

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

SOLD TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

SHIP TO

POMONA VALLEY GOLF

1500 W. 7TH STREET
UPLAND

CA 91786

ATTENTION:

LOS ANGELES,

CA 90006

SEASON'S GREETINGS!

03

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
14 DEC 77	13 DEC 77	TRUCK	VERBAL/DRM	FACT	NET 30	19727
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
714-0001	1	0	1	GAME D/C	1195.000	1195.00
				SHIP C.O.D. AT 150% OF AMT. OF PURCHASE		
				TOTAL		1195.00
SIN 6563						
104-A						
(W) RD 16966-12/23/77						

PLEASE PAY THE LAST
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT M 2 PAGE 1 OF 1

ORIGINAL INVOICE

Gremlin**Gremlin Industries, Inc.**

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

SOLD TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

SHIP TO

GARDEN HEIGHTS MINIATURE GOLF
8900 FLETCHER PARKWAY

ATTENTION: LOS ANGELES,

CA 90006

LA MESA

CA 92041

SEASON'S GREETINGS!

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
14 DEC 77	13 DEC 77	TRUCK	03 VERBAL / DRM	FACT	NET 30	19726
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
714-0001	1	0	1	GAME D/C A	1195.000	1195.00
				SHIP C.O.D. AT 150% OF AMT. OF PURCHASE		
				TOTAL		1195.00
<div data-bbox="194 813 422 1002" style="border: 2px solid black; padding: 5px; transform: rotate(-15deg); display: inline-block;"> RECEIVED 601294 FLETCHER </div> <div data-bbox="414 802 839 973" style="margin-left: 20px;"> S/N 6564 104-A (N) RD-16967-14/22/77 </div>						

PLEASE PAY THE LAST
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT "2" PAGE 2 OF 4

Gremlin

ORIGINAL INVOICE

Gremlin Industries, Inc.

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

SOLD TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

SHIP TO

S.O. MINIATURE GOLF
1805 . CLAIREMONT MESA BLVD.

ATTENTION: LOS ANGELES,

CA 90006

SAN DIEGO

CA 92111

SEASON'S GR

03

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
14 DEC 77	13 DEC 77	TRUCK	VERBAL/DRM	FACT	NET 30	19728
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
714-0001	1	0	1	GAME D/C	1195.000	1195.00
				SHIP COD AT 150% OF AMT. OF PURCHASE		
				TOTAL		1195.00

S/N 6561

104-A

(N) RD 16968-12/23/77

10/14/77
BUCHERER

PLEASE PAY THE LAST
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT 1 PAGE 5 OF 7

ORIGINAL INVOICE

Gremlin**Gremlin Industries, Inc.**

2401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

SOLD TO:

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

LOS ANGELES,

ATTENTION:

CA 90006

SHIP TO

FOUNTAIN VALLEY GOLF

SD FWY & MAGNOLIA AVENUE
FOUNTAIN VALLEY, CA 92708
SEASON'S GREETINGS!

03

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
14 DEC 77	13 DEC 77	TRUCK	VERBAL/DRM	FACT	NET 30	19729
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
714-0001	1	0	1	GAME D/C A	1195.000	1195.00
				SHIP COD AT 150% AMT. OF PUR- CHASE		
				TOTAL		1195.00
				S/N-6562		
				104-A		
				(N) RD16969-12/23/77		

VOUCHER
V612/13
VOUCHER

PLEASE PAY THE LAST
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT "2" PAGE 4 OF 4

RECEIVING DOCUMENT

LA No 17150

CIRCLE INTERNATIONAL CO.

DATE 2-7-78

Posted To

Equip. Card

Master Card

Cost Card

Received from

Simon Industries

San Diego, Calif.

QUANTITY	MANUFACTURER	DESCRIPTION	SERIAL NUMBERS		
6 Wm. Friction		Muscle.	995+160	2222	1155.00
			800+160	2226	960.00
			995+160	2852	1155.00
			760+160	2771	860.00
			760+160	2774	860.00
			920+160	420	1085.00
		(N) Invoice 2	0766-2/7/78		

frt. 20.20 ea.

Pro. Bill No. *FB 507687*

ALL MERCHANDISE RECEIVED SUBJECT TO DEDUCTION FOR BROKEN OR MISSING PARTS.

Freight Co. *Calif. Cartage* - \$121.25 Collect

RECEIVED BY *Go. A. C. Co.*

FILE COPY

EXHIBIT "3" PAGE 1 OF 1

DECLARATION OF RICHARD J. GREENE

I, RICHARD J. GREENE, declare:

1. That I am an attorney at law duly licensed to practice law before all of the Courts of the State of California, am an associate in the offices of Kirsch Arak and Bulmash and am one of the attorneys of record for CIRCLE INTERNATIONAL COMPANY, the Defendant herein.

2. That as to the following facts, I know them to be true of my own personal knowledge, and if called and sworn as a witness in this matter, could and would competently testify thereto.

3. That on or about June 1, 1978, I was consulted by Dean McMurdie, President of CIRCLE INTERNATIONAL COMPANY regarding the fact that he had been served with Complaint in the within action.

4. After discussing the facts of the case with Mr. McMurdie, I determined that venue should be in Los Angeles County, California and so informed Ernest Borunda, Esq., the attorney for Plaintiff. I did so on or about June 2, 1978 by sending Mr. Borunda a Stipulation to Change Venue. A true and correct copy is attached hereto marked Exhibit "1" and is incorporated herein by this reference as though set forth in full.

5. On or about June 14, 1978, I was informed by Mr. Borunda that the Stipulation was rejected and would not be signed by Plaintiff or Plaintiff's counsel.

6. That on June 26, 1978 and June 27, 1978, I traveled to San Diego and took the Depositions of Frank Fogelman

LAW OFFICES
KIRSCH, ARAK AND BULMASH
ATTORNEYS AT LAW
20000 CANTERBURY DRIVE
BEVERLY HILLS, CALIFORNIA 90212
TELEPHONE (310) 278-2250

LAW OFFICES
KIRSCH, KRAV AND BULLMASH
180 NORTH BERRY STREET, SUITE 200
BEVERLY HILLS, CALIFORNIA 90210
TELEPHONE (818) 278-9280

1 President of GREMLIN; Gene Candelore, Vice-President and General
2 Manager of GREMLIN, Gerald Hansen, Senior Vice-President of GREMLIN;
3 and Ray Foster, Vice-President and Treasurer of GREMLIN. Each and
4 all of said individuals, during the testimony at their individual
5 Depositions admitted that freight collect shipments to CIRCLE
6 INTERNATIONAL resulted in freight charges being paid by CIRCLE
7 at the point of delivery in Los Angeles County, California, and
8 that with regard to cash on delivery shipments, both the freight
9 charges and the payment of the order took place at point of
10 delivery in Los Angeles County, California. Mr. Hansen and Mr.
11 Foster contended that insofar as GREMLIN was concerned, the goods
12 were the property of CIRCLE INTERNATIONAL in San Diego and that
13 CIRCLE INTERNATIONAL instructed GREMLIN as to the manner of
14 shipping, i.e., that the goods were shipped pursuant to CIRCLE's
15 shipping instructions. However, neither Mr. Hansen or Mr. Foster
16 could produce written shipping instructions from CIRCLE nor could
17 they indicate the manner by which CIRCLE INTERNATIONAL supposedly
18 gave verbal shipping instructions.

19 Executed this 29th day of June, 1978, at Beverly
20 Hills, California.

21 I declare under penalty of perjury that the foregoing
22 is true and correct.

23
24 Richard J. Greene
25 RICHARD J. GREENE, Declarant
26
27
28

LAW OFFICES
KIRSCH, ARAK AND BULMASH
280 SOUTH BEVERLY DRIVE, SUITE 300
BEVERLY HILLS, CALIFORNIA 90212
TELEPHONE (213) 278-9150

KIRSCH ARAK AND BULMASH
280 So. Beverly Drive
Suite 300
Beverly Hills, CA 90212
(213) 278-9250

Attorneys for Defendant
CIRCLE INTERNATIONAL CO.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

GREMLIN INDUSTRIES, INC., a)	CASE NO. 416704
Delaware corporation,)	
)	STIPULATION FOR CHANGE OF VENUE;
Plaintiff,)	AND ORDER THEREON
)	
vs.)	
)	
CIRCLE INTERNATIONAL, a)	
California corporation, etc.)	
et al.,)	
)	
Defendants.)	

IT IS HEREBY STIPULATED AND AGREED by and between
Plaintiff GREMLIN INDUSTRIES, INC., a Delaware corporation and
Defendant CIRCLE INTERNATIONAL CO., a California corporation
(erroneously sued herein as CIRCLE INTERNATIONAL, a California
corporation) by and through their respective attorneys of record
that the within action be transferred to the Superior Court
of the County of Los Angeles, Central District, 111 North
Hill Street, Los Angeles, California;

IT IS FURTHER STIPULATED AND AGREED that Plaintiff shall
bear all costs and fees for said transfer;

LAW OFFICES
KIRSCH, ARAK AND BULMASH
260 SOUTH BEVERLY DRIVE, SUITE 300
BEVERLY HILLS, CALIFORNIA 90212
TELEPHONE (213) 276-9250

1 IT IS FURTHER STIPULATED AND AGREED that pending transfer
2 of the within action to the Los Angeles County Superior Court,
3 Defendant CIRCLE INTERNATIONAL CO., a California corporation shall
4 have an extension of time within which to file its responsive
5 pleading to the Complaint on file herein to and including 30
6 days after the Los Angeles Superior Court notifies all parties
7 as to assignment of a Los Angeles Superior Court case number.

8 Dated: June , 1978

9
10 ERNEST BORUNDA, ESQ. Attorney
for Plaintiff

11
12 Dated: June 3 , 1978

KIRSCH ARAK AND BULMASH

13
14 By: Richard J. Greene
15 RICHARD J. GREENE, Attorney
16 for Defendant CIRCLE
INTERNATIONAL CO.

17 O R D E R

18 Pursuant to the foregoing Stipulation, and good
19 cause appearing therefor:

20 IT IS SO ORDERED.

21
22 Dated: June , 1978

23
24 JUDGE OF THE SAN DIEGO SUPERIOR
25 COURT